

1 JAMES N. KRAMER (SBN 154709)
jkramer@orrick.com
2 ALEXANDER K. TALARIDES (SBN 268068)
atalarides@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
4 405 Howard Street
San Francisco, CA 94105-2669
5 Telephone: (415) 773-5700
Facsimile: (415) 773-5759

Attorneys for Nominal Defendant Apple Inc.

[Additional Counsel on Signature Pages]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE APPLE INC. STOCKHOLDER
DERIVATIVE LITIGATION

) Lead Case No. 4:19-cv-05153-YGR
) (Consolidated with Cases No. 4:19-cv-05863-
) YGR, 4:19-cv-05881-YGR, and 4:19-cv-08246-
) YGR)

This Document Relates To:

ALL ACTIONS.

) STIPULATION AND [PROPOSED]
)) ORDER TO CONTINUE STAY OF
)) ACTION

) Judge: Yvonne Gonzalez Rogers
)) Date Action Filed: August 19, 2019

1 Plaintiffs Terrence Zehrer, Andrew Fine, Tammy Federman SEP/IRA, and the Rosenfeld Family
2 Foundation (collectively “Plaintiffs”), and nominal defendant Apple Inc. (“Apple”), by and through their
3 undersigned counsel, stipulate as follows:

4 WHEREAS, the complaints filed in this consolidated stockholder derivative action (the
5 “Derivative Action”) allege, *inter alia*, breaches of fiduciary duty and violations of the Securities
6 Exchange Act of 1934 by certain officers and directors of Apple (collectively with Apple, the
7 “Defendants”);

8 WHEREAS, a consolidated securities fraud class action captioned *In re Apple Inc. Securities
9 Litigation*, No. 4:19-cv-02033-YGR (N.D. Cal.) is currently pending in this Court (the “Federal Securities
10 Action”), and is factually related to this Derivative Action;

11 WHEREAS, the Court has previously entered orders, pursuant to stipulations submitted by the
12 parties, temporarily staying the Derivative Action pending further developments in the Federal Securities
13 Action (*see, e.g.*, Dkt. No. 43); and

14 WHEREAS, the most recently ordered stay expired on January 4, 2021 (60 days following the
15 Court’s entry of its decision on the motion to dismiss the Revised Consolidated Class Action Complaint in
16 the Federal Securities Action, granting in part and denying in part the motion);

17 WHEREAS, the Court in the Federal Securities Action recently held a Case Management
18 Conference and issued a Case Management Order setting a fact discovery deadline of March 16, 2022;

19 WHEREAS, the parties agree that it would serve the interests of judicial economy and conserve
20 party resources to continue the current stay of proceedings and stay the Derivative Action until a date 30
21 days after the close of fact discovery in the Federal Securities Action;

22 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties, through their
23 respective counsel of record, as follows:

24 1. Except as specifically set forth herein, all proceedings in the Derivative Action, including
25 any obligation to respond to any complaint, are hereby stayed until a date 30 days after the close of fact
26 discovery in the Federal Securities Action.

27 2. During the pendency of the stay of proceedings, Apple shall advise Plaintiffs of any
28 mediation with the plaintiff(s) in the Federal Securities Action and endeavor in good faith to include

1 Plaintiffs in any such mediation. In the event that Plaintiffs are not able to participate, then Apple will
2 endeavor in good faith to arrange a separate mediation with Plaintiffs in regard to the derivative claims on
3 a date close to the mediation in the Federal Securities Action. If Apple engages in mediation or other
4 formal settlement negotiations regarding the same or similar facts as those alleged in the Derivative Action
5 with any Company shareholder during the pendency of the stay of proceedings, Apple agrees to endeavor
6 in good faith to include Plaintiffs in any such mediation or other formal settlement negotiations.

7 3. The composition of Apple's Board of Directors that will be considered in connection with
8 determining whether Plaintiffs' operative consolidated complaint, amended or otherwise, has adequately
9 pled that a pre-litigation demand on the Company's Board of Directors would have been futile shall be the
10 composition of the Board of Directors as of August 19, 2019, the date the earliest of the actions
11 consolidated into this Derivative Action was initiated.

12 4. Plaintiffs may file a consolidated complaint during the pendency of the stay of proceedings.
13 The filing of a consolidated complaint shall not affect the pendency of the stay of proceedings.
14 Defendants shall not be required to move, answer, plead, or otherwise respond to any consolidated
15 complaint during the pendency of the stay of proceedings.

16 5. This stay shall not preclude Plaintiffs from pursuing, during the course of the stay, any
17 rights Plaintiffs may have individually or collectively to inspect the Company's books and records
18 pursuant to California Corporations Code section 1601 ("Section 1601"), nor shall it impact Apple's rights
19 or defenses in response to any demand pursuant to Section 1601.

20 6. Any party may lift the stay by providing thirty (30) days' written notice to all counsel of
21 record via e-mail that they no longer consent to the voluntary stay of this Derivative Action.

22 7. Within forty-five (45) days of the expiration or lifting of the stay pursuant to paragraphs 1
23 or 6 hereof, the parties will meet and confer to agree upon a schedule for proceedings in the Derivative
24 Action and file a stipulation regarding the same with the Court.

25 8. By entering into this stipulation, the parties do not waive any rights or defenses not
26 specifically addressed herein.

IT IS SO STIPULATED.

Dated: January 21, 2021

ROBBINS LLP
BRIAN J. ROBBINS
CRAIG W. SMITH
STEVEN R. WEDEKING

/s/ Craig W. Smith
CRAIG W. SMITH

5040 Shoreham Place
San Diego, CA 92122
Telephone: (619) 525-3990
Facsimile (619) 525-3991
E-mail: brobbins@robbinsllp.com
csmith@robbinsllp.com
swedeking@robbinsllp.com

WEISSLAW LLP
DAVID C. KATZ (admitted *pro hac vice*)
MARK D. SMILOW (*pro hac* to be filed)
JOSHUA RUBIN (*pro hac* to be filed)
1500 Broadway, 16th Floor
New York, NY 10036
E-Mail: dkatz@weisslawllp.com
msmilow@weisslawllp.com
jrubin@weisslawllp.com

WEISSLAW LLP
Joel E. Elkins
9107 Wilshire Blvd., Suite 450
Beverly Hills, CA 90210
Telephone: (310) 208-2800
Facsimile (310) 209-2348
E-mail: jelkins@weisslawllp.com

Co-Lead Counsel for Plaintiffs

1 Dated: January 21, 2021

ORRICK HERRINGTON AND SUTCLIFFE LLP
JAMES N. KRAMER
ALEXANDER K. TALARIDES

3 */s/ Alexander K. Talarides*
4

ALEXANDER K. TALARIDES

5 The Orrick Building
6 405 Howard Street
7 San Francisco, CA 94105
Telephone: (415) 773-5700
E-mail: jkramer@orrick.com
atalarides@orrick.com

8 *Counsel for Nominal Defendant Apple Inc.*
9

10
11
12 I, Alexander K. Talarides, am the ECF User whose ID and password are being used to file this
13 Stipulation and [Proposed] Order to Continue Stay of Action. In compliance with Civil L.R. 5-1(i), I
14 hereby attest that concurrence in the filing of this document has been obtained from each of the other
15 signatories.

16 */s/ Alexander K. Talarides*
17

ALEXANDER K. TALARIDES

21 ***

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23
24 DATED: _____

25 HONORABLE YVONNE GONZALEZ ROGERS
26 UNITED STATES DISTRICT JUDGE
27
28